

Ameritech

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Alan N. Baker
Counsel

September 9, 1997

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William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Payphone interexchange carrier selection
(CC Docket 96-128)

Dear Sir:

A letter dated July 30, 1997 (hereafter called the complaint) from Charles H. Helein, Esq., written on behalf of unnamed independent pay telephone providers, addressed to the Enforcement Task Force, Enforcement Division, Common Carrier Bureau, complains about "strong-arm tactics" employed by the payphone operations affiliated with BellSouth and Ameritech in regard to changes in the selection of the presubscribed interexchange carrier ("PIC") at their payphones. This letter responds to the complaint only insofar as it pertains to Ameritech and shows that even if its allegations were true (which they are mostly not), they would fail to establish any violation of the Communications Act or of any other law or regulation.¹

¹ Just as the complaint does not specify any section of the Act that has been violated, it also fails to point to any jurisdictional basis under which a complaint such as this might be filed. Section 208, for example, does not suffice for this purpose, because it applies only to violations of the act by a common carrier, and the definition in Section 3(44) of the Act makes clear both (i) that the providing of

(Footnote continued . . .)

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The complaint attacks the process of carrier selection at Ameritech payphones almost as if the complainants were wholly unaware of the dramatic changes in payphone rules wrought by Section 276 of the Telecommunications Act of 1996 and the Commission's Report and Order implementing those provisions.² Indeed, if the ancient beliefs that seem to underlie the complaint were to be accepted, PIC selections would be stifled under a new blanket of regulation more smothering than Congress has just finished removing. Fortunately, the complaint does not provide the slightest ground for departing from the competitive policies that both Congress and the Commission have mandated.

* * * *

Payphone PIC selection is dealt with prominently and decisively in the new Act. Section 276(b)(1)(D) now makes clear that — unless the Commission were to have found it is not in the public interest, which it declined to do³ — Bell operating companies, who were formerly barred from making even the merest suggestion as to the payphone premises owner's choice of an IXC at the Bell company's own payphones, now have — subject only to the possibility of pre-existing agreements⁴ —

(. . . *Footnote continued*)

pay telephones is not a common carrier function and (ii) that entities who are otherwise common carriers (such as Ameritech's LECs) are not subject to common carrier regulation as to their payphones. Thus, under the new regulatory mechanisms established by the 1996 Act, LEC payphones are now subject to exactly the same form and extent of Commission regulation as the payphones operated by independent providers like the complainants.

² *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, FCC 96-388 (released Sept. 20, 1996) [hereinafter "Payphone Order"], *on reconsideration*, FCC 96-439 (Nov. 8, 1996), *Order*, DA 97-678 (Common Carrier Bureau Apr. 4, 1997), *Order*, DA 97-805 (Common Carrier Bureau Apr. 15, 1997), *affirmed in part and reversed in part on other grounds sub nom. Illinois Public Telecom. Ass'n v. FCC*, — F.3d — (D.C. Cir. July 1, 1997).

³ Payphone Order, *supra* note 2, at ¶ 226.

⁴ These include any "existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996" under

(*Footnote continued . . .*)

“the same right that independent payphone providers have to negotiate with the location provider” concerning the IXC, as well as the ability “to select and contract with” the IXC directly. In applying this new provision, the Commission has expressly “decline[d] to place restrictions on the BOCs’ ability to negotiate for the selecting and contracting of inter-LATA carriers presubscribed to their payphones,”⁵ and it has also said that “any restrictions on their [*i.e.*, the BOCs’] ability to aggregate inter-LATA volume, or to direct interLATA traffic to a particular carrier, are unwarranted.”⁶

Against this unambiguous background, the present complaint cannot stand. First of all, the parties who are complaining here are neither IXCs nor premises owners. Instead, they purport to be Ameritech’s head-to-head competitors for the business of the very same premises owners they accuse Ameritech of abusing. Such parties plainly lack legal standing to complain about PIC changes at Ameritech payphones. If there are any pay telephone premises owners who object to the way Ameritech handles PIC choices, they can and surely will take their payphone business straight to the complainants. There is no need for regulatory intervention in cases such as this where — *if* such exaggerated allegations as these were true — the natural forces of competition can provide an swift and effective remedy.⁷

Moreover, the complaint would be without merit even if brought in the names of the right parties. The new law gives the BOCs the right to negotiate with their premises owners as to the PIC, and accordingly Ameritech does recommend the choice of LDDS at Ameritech payphones (although Ameritech will gladly accept other PICs if the premises owner

(. . . Footnote continued)

Section 276(b)(3) or “any agreement with the location provider” (*i.e.*, between the BOC and the location provider) under Section 276(b)(1)(D).

⁵ Payphone Order, *supra* note 2, at ¶ 240.

⁶ *Id.* (footnote omitted).

⁷ At some points the complaint tries to deal with its own lack of standing. On page 3, for example, it is claimed that Ameritech’s “purpose” is “to gain unfair advantage over IPSPs.” But there is nothing to explain how such a purpose could be accomplished through PIC changes.

prefers). Furthermore, the new Ameritech form of agreement that the complaint attacks is in full compliance with Section 276.⁸ First of all, its provisions that relate to existing carriers, which the complaint particularly assails, are intended to prevent the possibility of inadvertent conflict with pre-1996 agreements, which, as already noted, are expressly preserved by law.⁹ Second, if and when the premises owner signs the agreement, the result is the natural outcome of the negotiation process that Section 276 authorizes: an agreement by the premises owner not to change the payphone or the PIC for the term of the agreement, in return for the local and long-distance commissions the premises owner will receive over that term.¹⁰

Finally, the complaint's attempt to label these carrier choices at Ameritech pay telephones as "slamming" is without merit because it hopelessly confuses the differences between a premises owner and an end user and between the legal obligations of a LEC and its payphone affiliate. "Slamming" occurs only when someone (usually an IXC) submits a PIC choice to the LEC without authority from the person entitled to choose the IXC. Under Section 276, however, the premises owner now is not so entitled; it cannot be "slammed" because it is no longer the party with the authority to submit PIC changes directly to the LEC.¹¹ Instead, the premises owner must negotiate with the LEC payphone affiliate concerning who will be the PIC.

⁸ In the case of existing Ameritech payphones who have not yet signed the new agreement, Ameritech — although not required to do so under Section 276 — continues to accept PIC changes direct from premises owners or from IXCs by means of a Letter of Agency in the same form as formerly accepted by the Ameritech LECs at Ameritech payphones.

⁹ See note 4, *supra*.

¹⁰ Thus the presence of a signed new agreement would account for such a conversation as that related on page 3 of the complaint. Ameritech personnel state that that conversation never occurred. But if the premises owner had already signed an agreement, and the agreement was still in force, Ruth would have been 100% right to say that it was too late to change the PIC.

¹¹ Since Section 276 grants to LEC payphone operations "the same right that independent payphone providers have," the LECs now must look to their payphone affiliates as the person authorized to make PIC changes at LEC payphones, just as they have always accepted PIC changes directly from independent payphone providers rather than the premises owner or the IXC.

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Moreover, the LEC-affiliated payphone operations, who are not common carriers and who are entitled to be treated just like other payphone companies, are clearly *not* required under the plain meaning of Section 276 to accept PIC changes blindly from their premises owners in the same neutral, uninvolved way that the LECs themselves must accept PIC changes from their end users. Otherwise, Judge Greene's old rule would be restored in its entirety, contrary to the plain intent of Congress. Furthermore, the pay telephone premises owner, unlike the typical "slamming" victim, is not the party who will have to pay the long distance charges at the payphone, so the economic injury invariably associated with "slamming" is absent here. Thus the notion of "slamming" is foreign to the issues involved here, and those aspects of the complaint should be rejected.

* * * *

Inasmuch as the complaint fails to establish any violation of any law or regulation on the part of Ameritech, no further action should be taken in regard to it.

Very truly yours,

A handwritten signature in black ink, appearing to read "Conrad B. Salzman". The signature is fluid and cursive, with a long horizontal stroke at the end.